

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN F. ACKERMAN,
WILLIAM R. STOWELL and
ROBERT A. JOHNSON

Appeal 2007-2040
Application 10/632,741
Technology Center 1700

Decided: May 30, 2007

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and CHARLES F. WARREN, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6, 7, 9-12 and 14-16. Claim 6 is illustrative:

6. Apparatus for a gas turbine engine, said apparatus comprising a washing system comprising a pump in flow communication with at least one nozzle, a first fluid contained within a first reservoir, a second fluid contained within one of the first reservoir and a second reservoir, said

washing system configured to inject said first fluid and said second fluid into the gas turbine engine, wherein one of said first and second fluids comprises an anti-static liquid facilitates reducing a rate of formation of particulate matter within the gas turbine engine.

The Examiner relies upon the following references as evidence of obviousness:

Bartos	US 4,059,123	Nov. 22, 1977
Hodgens, II	US 4,713,120	Dec. 15, 1987

Appellants' claimed invention is directed to an apparatus comprising a washing system for a gas turbine engine. The apparatus comprises a pump in flow communication with at least one nozzle and first and second reservoirs for supplying first and second fluids, respectively, to the nozzles. One of the first and second fluids comprises an anti-static liquid that reduces the rate of formation of particulate matter within the gas turbine engine.

Appealed claims 6, 7, 9-12 and 14-16 stand rejected under 35 U.S.C. § 112, first paragraph, enablement requirement. All of the appealed claims also stand rejected under 35 U.S.C. § 102(b) as being anticipated by both Hodgens and Bartos.

Appellants do not set forth a separate substantive argument for any particular claim on appeal. Accordingly, all of the appeal claims stand or fall together with claim 6.

We have thoroughly reviewed the respective positions advanced by Appellants and the Examiner. In so doing, we will not sustain the Examiner's rejection under § 112, first paragraph. However, we are in full agreement with the Examiner that the claimed subject matter is described by

the applied references within the meaning of § 102. Since we concur with the Examiner's reasoning in support of the rejections, as well as his cogent deposition of the arguments raised by Appellants, we will adopt the Examiner's reasoning as our own in sustaining the § 102 rejections of all the appealed claims.

We consider first the Examiner's § 112, first paragraph rejection. The Examiner maintains that the original Specification does not enable one of ordinary skill in the art to practice the claimed invention wherein the first fluid is an anti-static fluid. However, as understood by the Examiner, the claimed invention on appeal is an apparatus for treating a gas turbine engine, and not a process for doing so. Accordingly, regardless of whether the first or second reservoir contains an anti-static liquid, the pertinent structure of the claimed apparatus remains the same. Manifestly, one of ordinary skill in the art would be fully capable of filling either reservoir with an anti-static liquid. Furthermore, Appellants point out in their Reply Brief that page 4 of the Specification discloses that in one embodiment the first and second liquids can be injected simultaneously into the engine.

We also do not agree with the Examiner that the present Specification is non-enabling with respect to the claimed anti-static liquid. While we appreciate, as urged by the Examiner, the breadth of materials encompassed by the claimed anti-static liquid, we have no doubt that one of ordinary skill on the art would need to resort to only routine experimentation to determine which of the myriad of available materials qualify as an anti-static liquid to at least some degree. Indeed, we agree with the Examiner that water, EDTA and other liquids disclosed in the applied references qualify as anti-static

liquids in view of the vast breadth of the claimed recitation, which embraces materials exhibiting even low levels of the anti-static property.

We now turn to the separate § 102 rejections of all the appealed claims over Hodgens and Bartos. The sole substantive argument advanced by appellants with respect to the separate rejections is that neither of the applied references discloses the use of an anti-static liquid. However, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). *See also In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705, 706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235, 238 (CCPA 1967). As long as the apparatus of Hodgens and Bartos are capable of injecting an anti-static liquid into a gas turbine engine, the prior art apparatuses meet the requirements of the claimed feature. Appellants have not established on this record any structural distinction between apparatus within the scope of the appealed claims and the apparatuses fairly described by both Hodgens and Bartos, and no such structural distinction is apparent to us.

Appellants maintain that "Hodgens does not describe nor suggest a gas turbine engine washing system including each and every *structural* limitation claimed by the Applicants ... [since] [s]pecifically, Hodgens does not describe nor suggest a gas turbine engine washing system that includes an anti-static liquid" (page 13 of Reply Br., second para.). However, Appellants' claim recitation of one of the first and second fluids comprising

an anti-static liquid is not a *structural* limitation on the claimed apparatus. Consequently, it is of no moment whether either of the applied references characterizes the injected fluids as anti-static liquids. Moreover, we find no error in the Examiner's finding that the aqueous solutions of Hodgens, comprising chelating agents and/or surfactant compositions, qualify as anti-static liquids, as broadly claimed. Likewise, we agree with the Examiner that water itself and the liquids injected by Bartos qualify as anti-static liquids. While Appellants disagree that the various liquids disclosed in the references are anti-static liquids, Appellants have presented no argument which demonstrates that anti-static liquids within the scope of the appealed claims are materially different than the liquids disclosed by the references.

In conclusion, based on the foregoing, the Examiner's rejection under 35 U.S.C. § 112, first paragraph, is reversed. However, the Examiner's § 102 rejections of all the appealed claims are sustained for the reasons well stated by the Examiner. Consequently, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(iv)(effective Sept. 13, 2004).

AFFIRMED

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